

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CHARLES E. ORTEGO, *et al.*,

Plaintiff,

v.

LUMMI ISLAND SCENIC ESTATES
COMMUNITY CLUB, INC., *et al.*,

Defendant.

No. C14-1840RSL

ORDER DENYING DEFENDANTS'
MOTION FOR ATTORNEY'S FEES

This matter comes before the Court on “Defendants’ Motion for Attorney’s Fees.” Dkt. # 213.¹ Defendants assert that they are entitled to fees under a provision in the Bylaws of the Lummi Island Scenic Estates Community Club, Inc. (“LISSEC”) which states that any dues, assessments, charges, interest, fines, or penalties levied by the homeowners’ association, “together with all expenses, attorney fees and costs reasonably incurred in enforcing the same, shall be paid by the member and shall be a lien upon said land and the membership appurtenant thereto” Dkt. # 98-13 at 31 (Bylaws § 4.5.1.4.).

¹ Plaintiffs’ request to strike “argumentative facts introduced in Defendants’ reply brief” is DENIED. Plaintiffs raised the issue of delinquency in response, offering no evidence to support their assertion that “Most of the plaintiffs are current on their accounts.” Dkt. # 228 at 3 (emphasis in original). The account balances in defendants’ reply are in direct response to plaintiffs’ assertion.

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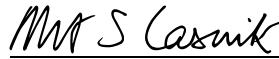
1 Defendants' fee request is DENIED. This lawsuit cannot fairly be described as a
2 collection or enforcement action that could trigger a fee award under § 4.5.1.4. The primary
3 issue -- and all of plaintiffs' claims -- turned on the interpretation of the original plats and
4 whether defendants had overstepped their authority when they continued to operate LISECC
5 more than 25 years after the plats were recorded. Plaintiffs did not assert a quiet title claim or
6 seek a declaration of rights and duties under the Bylaws. Defendants did not assert a
7 counterclaim for recovery of delinquent dues or assessments. The Court, for its part, has never
8 considered whether an individual plaintiff is delinquent and has not explicitly ordered the
9 payment of past dues and assessments.

10 In evaluating language that is almost identical to the fee provision in LISECC's Bylaws,
11 the court in Roats v. Blakely Island Maintenance Comm'n, Inc., 169 Wn. App. 263, 285-86
12 (2012), approved an award of fees to the extent that the collection of delinquent assessments was
13 an issue in the litigation. In that case, the homeowners association threatened to file a lien
14 against plaintiffs' property, prompting plaintiffs to file suit, seek a restraining order, and assert a
15 quiet title claim. The delinquent assessments were deemed at issue until plaintiffs brought their
16 account current by depositing the contested funds with the court. On motion, defendants' were
17 awarded fees only for the period between the filing of the complaint and the deposit of the funds.
18 After that point, the court found that the litigation was no longer about collecting unpaid
19 assessments, but rather about the scope of the association's authority and the propriety of certain
20 board procedures. Id. at 289. Applying Roats to this case results in the conclusion that the
21 collection of delinquent assets was never at issue. No fees can be assessed under § 4.5.1.4. of the
22 Bylaws.

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1 For all of the foregoing reasons, defendants' motion for attorney's fees is DENIED.
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3 Dated this 23rd day of March, 2017.
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6 Robert S. Lasnik
7 United States District Judge
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